

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF ALASKA

3
4 NINILCHIK CHARTERS, LLC,
5 Plaintiff,

6 vs.
7 CATERPILLAR, INC; a Delaware
8 Corporation,
9 Defendant.

10 Case No. A04-0250 CV (JKS)

11 DEPOSITION OF ELDON SUMMERS,
12 Pages 1-37, inclusive
13 Commencing at 1:00 p.m.
14 Thursday, November 10, 2005
15 Anchorage, Alaska

16
17
18 **Alaska Stenotype Reporters**
19 511 West Ninth Avenue
20 Anchorage, AK 99501-3520
21 Serving Alaska Since 1953

22 Rick D. McWilliams, RPR, Ret. Telephone 907.276.1680
23 Fred M. Getty, RPR, Ret. Email AkSteno@aol.com
24 Fax 907.276-8016

25

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF ALASKA

4 NINILCHIK CHARTERS, LLC,
5 Plaintiff,
6
7 VS.
8 CATERPILLAR, INC; a Delaware
9 Corporation,
10 Defendant.

Case No. A04-0250 CV (JKS)

10 DEPOSITION OF ELDON SUMMERS,
11 taken on behalf of the defendant, pursuant to notice, at
12 the law offices of Hughes, Bauman, Pfiffner, Gorski and
13 Seedorf, 3900 C Street, Suite 1001, Anchorage, Alaska
14 before Rosie S. Scott, Certified Shorthand Reporter for
15 Alaska Stenotype Reporters and Notary Public for the
16 State of Alaska.

17

18

19

20

21

22

25

—

1 A-P-P-E-A-R-A-N-C-E-S
2
3 For the Plaintiff: DAVIS AND DAVIS
4 By: Leonard R. Anderson
5 405 West 36th Avenue
6 Suite 200
7 Anchorage, Alaska 99503
8 (907) 561-4420
9
10 For the Defendant: SEDGWICK DETERT MORAN AND ARNOLD
11 By: Daniel W. Bir
12 801 South Figueroa Street
13 Eighteenth Floor
14 Los Angeles, CA 90017-5556
15 (213) 615-8051
16
17 Also present: Michael Flores
18
19
20
21
22
23
24
25
Reported By: Rosie S. Scott, Certified
Shorthand Reporter

1

I-N-D-E-X

2

3

EXAMINATION BY:

PAGE

4

5

Mr. Bir

5

6

Mr. Anderson

37

7

8

9

10

EXHIBITS:

11

Exhibit 1, Deposition Notice

31

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 Q. Okay. The day the engine failed, you guys --
2 if you could walk me through what you remember, as far as
3 going out. You did your normal routine in the morning,
4 correct, as far as warming the boat up; you loaded the
5 passengers on, correct?

6 A. Correct.

7 Q. You were idling out, correct?

8 A. Correct.

9 Q. Were you at cruising speed at the time?

10 A. I believe so.

11 Q. Do you remember how long you were at cruising
12 speed for?

13 A. I don't know. I'm wanting to say I was out
14 close to Barwell Island, but I'm not positive.

15 Q. Okay. And if you could describe for me what
16 happened in the sense of, how did you know the engine
17 failed? What led you to believe it was having problems?

18 A. I just heard a ticking noise that wasn't
19 normal, because when you run a boat long enough you kind
20 of learn the intricacies of each boat and how it differs
21 from the other ones. The sounds are different, the
22 engine noises. You know, even so much the wind going by
23 the door you get to know the differences. And I heard
24 just a different -- kind of a ticking noise, so I just
25 shut the engine down right then.

1 Q. Okay. So you were going along cruising speed.
2 You heard that ticking noise, which you thought was
3 unusual?

4 A. Yes.

5 Q. And you just shut down the engine?

6 A. I did.

7 Q. Do you remember what you did next?

8 A. I don't. I think we came back in. If I
9 remember correctly I think we canceled the trip and came
10 back in. I don't remember for sure.

11 Q. Do you remember at the time you heard the
12 ticking noise and the time you shut down the engine where
13 the passengers were?

14 A. All over the boat.

15 Q. That's my question. Generally, as you're going
16 out and you guys had not started fishing yet, correct?

17 A. No.

18 Q. Where are the passengers generally?

19 A. They're usually milling around the back of the
20 deck. The only place they're not allowed is in the
21 front -- right in front of my vision so I can't see
22 where logs and things are coming up in front of me. They
23 might have been milling around the back, walking the back
24 deck, sitting inside, sometimes they play cards,
25 sometimes they just relax. A lot of them sleep.

101,



1 generally call, you know, somebody else that's close by
2 like one of your other boats in your fleet and ask for a
3 tow-in. And then it would be the boat's responsibility
4 that's actually doing the towing to contact the Coast
5 Guard or go out under a Pan-Pan or some other kind of a
6 radio signal, letting us know that there is a restrictive
7 vessel coming into the area.

8 Q. Okay. On the date the engine failed, I know
9 you mentioned that when you came back into the docks it
10 was tough to park, which is obvious?

11 A. Yes.

12 Q. Did you have any problems getting the boat back
13 in other than that?

14 A. No, it was just a little bit more difficult to
15 steer.

16 MR. BIR: That's all I have. Leonard?

17 EXAMINATION

18 BY MR. ANDERSON:

19 Q. I just want to clarify one thing. You were
20 asked a question about -- and I think I know the answer.
21 I just want to make sure the record reflects it. The
22 question about having been employed through the end of
23 the summer, that included all the way through November;
24 is that correct?

25 A. Correct.

1 Q. So that would just be the season and maybe not
2 just the summer months?

3 A. Correct. Fishing season, including deer
4 hunting.

5 MR. ANDERSON: Okay. Thank you.

6 MR. BIR: Let's go off record for a minute.

7 (Off record.)

8 MR. BIR: Okay. At this time I propose that we
9 relieve the court reporter of her duty under the Code.
10 The parties have agreed that Mr. Summers will not receive
11 a copy of his transcript. He is satisfied that his
12 testimony is completely accurate. As such the original
13 transcript as prepared by the reporter will be the
14 operative and valid transcript.

15 The original transcript will be sent to my
16 office at which time I will keep the original transcript
17 and make it available for any party that would like to
18 see the original transcript.

19 In any case, if the original transcript is
20 destroyed, lost or otherwise unavailable, a certified
21 copy can be used in its place at any trial or proceeding
22 in this case with the same full force and affect.

23 MR. ANDERSON: That's it.

24 MR. BIR: We're good.

25 (Proceedings concluded at 1:45 p.m.)
(Signature waived.)

1

REPORTER'S CERTIFICATE

2

I, ROSIE S. SCOTT, CSR, hereby certify:

3

That I am a Certified Shorthand Reporter

4

for Alaska Stenotype Reporters and Notary Public for the
5 State of Alaska; that the foregoing proceedings were
6 taken by me in computerized machine shorthand and
7 thereafter transcribed by me; that the transcript
8 constitutes a full, true and correct record of said
9 proceedings taken on the date and time indicated therein.

10

11

Further, that I am a disinterested person to
said action.

12

13

IN WITNESS WHEREOF, I have hereunto

14

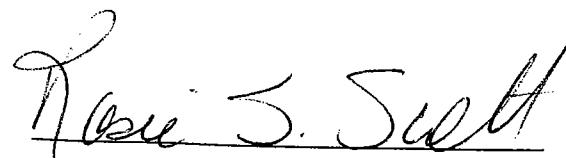
subscribed my hand and affixed my official seal this
16th day of December, 2005.

15

16

17

18



19

ROSIE S. SCOTT
Certified Shorthand Reporter
My Commission Expires
8/16/08

20

21

22

23

24

25

